

DECISION MEMORANDUM
William Arlt; Road Right-of-Way Renewal
DOI-BLM-AZ-G020-2014-0015-CX

U.S. Department of the Interior
Bureau of Land Management
Tucson Field Office

Project Description

Proposed action is to provide physical and legal access over public land to private land using an existing road. Access to the applicant's private land has been granted on a previous Right-of-Way grant, which expired on October 6, 2012.

On October 2, 1992, a Right-Of-Way (ROW) for access was granted to Mr. Lynn Andersen. The length of the road is 1,600 feet and the width is 12 feet and approximately 0.41 acres. On October 7, 1992, Mr. Andersen filed an assignment request. An application for assignment of this ROW was filed by William Arlt with concurrence from Mr. Lynn Andersen. All requirements of the assignment were met and the ROW was assigned to William Arlt on November 17, 1992. This ROW expired on October 6, 2012. Mr. Arlt filed a renewal application on December 28, 2012. His application indicates a desire to continue use of the ROW as it presently exists on the ground. The access road is north of the town of Bisbee. The ROW allows for ingress and egress over public land known as the Brewery Gulch Road, extending from the end of Zacatecas Canyon extension of Brewery Avenue to the applicant's private land. The proposed action qualifies as a CX under Departmental Manual 516, 11.9, Appendix 4 E.9 that reads, "Renewals and assignments of leases, permits or rights-of-way where no additional rights are conveyed beyond those granted by the original authorization". The Safford District Office initiated EA AZ-040-02-46. A consultant did an on the ground cultural resource survey in 1992 in the immediate area of the road. Although archaeological and historical remains were found, it was determined by the Arizona State Historic Preservation Officer that the issuance of the ROW grant would not have any adverse effect on the findings. A wildlife survey was done by the wildlife staff and no T&E species were encountered. The EA was signed by the Safford Area Manager on October 2, 1992. An active & authorized record search was done. There are no active mining claims. The area is located within the Susnow Grazing Allotment, however the allotment is not foreseen to be an issue for the ROW or vice-versa. A cultural resource compliance clearance survey was completed again on May 7, 2014, which included a Class I Records Search and review of related documentation contained within the case file. Nothing of significance was gleaned from this review. The special stipulations regarding cultural resources and maintenance of the road will remain as part of the Right-of-Way renewal. The grant will be issued for a twenty year term with the right of renewal. This ROW is authorized under Title V of FLPMA.

Approval and Decision

Based on a review of the project described in the attached Categorical Exclusion documentation and field office staff recommendations, I have determined that the project is in conformance with the Safford District Resource Management Plan (RMP), Page 22: "Rights-of-Way, leases and permits will be considered on a case-by-case basis, in accordance with the decision of the Resource Management Plan." (approved August 1991; 2) 6-16-1988) and is categorically excluded from further environmental analysis. It is my decision to approve the action as proposed with the attached stipulations.

Administrative Review or Appeal Opportunities

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and Form 1842-1, which can be found at the Tucson Field Office. If an appeal is taken, your notice of appeal must be filed at Tucson Field Office, 3201 E Universal Way, Tucson AZ 85756 within 30 days from receipt of this decision. The appellant has the burden of showing that the decision appealed from is in error.

If you wish to file a petition (pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993) (request) for a stay (suspension) of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the Office of the Solicitor (Department of the Interior, Office of the Field Solicitor, Sandra Day O'Connor U.S. Court House #404, 401 West Washington Street SPC44, Phoenix, AZ 85003-2151) (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

Standards for Obtaining a Stay

1. The relative harm to the parties if the stay is granted or denied,
2. The likelihood of the appellant's success on the merits,
3. The likelihood of immediate and irreparable harm if the stay is not granted, and
4. Whether the public interest favors granting the stay.

/s/ Karen Simms, Acting Field Office Manager
Viola Hillman, Tucson Field Office Manager

06/24/2014
Date

Attachment: Stipulations

STIPULATIONS for ARLT ROW Renewal

AZA-26783 Road ROW for William Arlt

1. Repair and maintenance will be done by hand or with light, rubber-wheeled construction equipment, such as a Bob Cat, or a small, frontend loader. Repair or maintenance by track-driven equipment, such as a bulldozer, will not be allowed.
2. Any archaeological or historical artifacts or remains, or vertebrate fossils discovered during operations will be left intact and undisturbed; all work in the area shall stop immediately; and the authorized officer will be notified immediately. The authorized officer shall allow commencement of operations upon clearance.
3. An additional cultural and paleontological resource survey may be required in the event the project location is changed or additional surface disturbing operations are added to the project after the initial survey. Any such survey will be completed prior to commencement of operations.
4. If, in connection with operations under this authorization, any human remains, funerary objects, sacred objects or objects of cultural patrimony as defined in the Native American Graves Protection and Repatriation Act (:L. 101-601; Stat. 3048; 25 U.S.C. 3001) are discovered, the permittee shall stop operations in the immediate area of the discovery, protect the remains and objects, and immediately notify the authorized officer Monitoring of the discovery. The permittee shall continue to protect the immediate area of the discovery until notified by the authorized officer that operations may resume.
5. All valid rights existing on the date of the original right-of-way grant will be recognized and complied with.
6. The holder shall comply with all State and Federal laws applicable to the authorized use and such additional State and Federal laws, along with the implementing regulations, that may be enacted and issued during the term of the grant.
7. Use of pesticides shall comply with the applicable Federal and State laws. Pesticides shall be used only in accordance with their registered uses and within limitations imposed by the Secretary of the Interior. Prior to the use of pesticides, the holder shall obtain from the authorized officer written approval of a plan showing the type and quantity of material to be used, pest(s) to be controlled, method of application, location of storage and disposal of containers, and any other information deemed necessary by the authorized officer. Emergency use of pesticides shall be approved in writing by the authorized officer prior to such use.
8. The holder(s) shall comply with all applicable Federal laws and regulations existing or hereafter enacted or promulgated. In any event, the holder(s) shall comply with the Toxic Substances Control Act of 1976, as amended (15 U.S.C. 2601, et.seq.) with regard to any toxic substances that are used, generated by or stored on the right-of-way or on facilities authorized under this right-of-way grant. (See 40 CFR, Part 702-799 and especially, provisions on polychlorinated

biphenyls, 40 CFR 761.1-761.193.) Additionally, any release of toxic substances (leaks, spills, etc.) in excess of the reportable quantity established by 40 CFR, Part 117 will be reported as required by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Section 102b. A copy of any report required or requested by any Federal agency or State government because of a reportable release or spill of any toxic substances shall be furnished to the authorized officer concurrent with the filing of the reports to the involved Federal agency or State government.

9. The holder of Right-of-Way Number AZA 26783 agrees to indemnify the United States against any liability arising from the release of any hazardous substance or hazardous waste (as these terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, et.seq., or the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901, et.seq.) on the right-of-way (unless the release or threatened release is wholly unrelated to the right-of-way holder's activity on the right-of-way). This agreement applies without regard to whether a release is caused by the holder, its agent, or unrelated third party.
10. The holder shall notify the authorized officer prior to commencement of emergency maintenance outside the right-of-way to discuss repair and construction activities.
11. Any modification to the right-of-way initiated by the holder may require the submission of an environmental assessment, cultural resource survey and biological evaluation to the BLM's authorized officer.
12. The holder will maintain the roads in a good and safe condition; also do mitigation for erosion control, and dust mitigation.
13. The operator shall be held responsible if noxious weeds become established within the areas of operations. Weed control shall be required on the disturbed land where noxious weeds exist, which includes any access roads and adjacent land affected by the establishment of weeds because of this action. The operator shall consult with the authorized officer for acceptable weed control methods, which include following U.S. Environmental Protection Agency (EPA) and BLM requirements and policies.
14. Any vehicles and equipment that are brought in from outside the area will be power-washed, including the undercarriage, prior to entering the right-of-way and afterwards before moving vehicle and equipment onto any other public lands, to prevent the introduction and spread of noxious weeds and/or invasive species.